

3390.

ROADS AND HIGHWAYS—WHEN COUNTY COMMISSIONERS, WITH CONSENT OF MUNICIPAL COUNCIL, MAY RESORT TO COUNTY ROAD REPAIR FUND AND MAKE REPAIRS UPON MUNICIPAL STREET DIRECTLY CONNECTED WITH COUNTY ROAD BY ANOTHER STREET RUNNING AT RIGHT ANGLES FROM STREET PROPOSED TO BE REPAIRED—SEE SECTION 6954 G. C.

*Under section 6954 G. C., county commissioners, with the consent of the municipal council, may resort to the county road repair fund and make repairs upon a municipal street directly connected with a county road by another municipal street running at right angles from the street proposed to be repaired. This is true even though there are other indirect routes connecting said county road with the street proposed to be repaired, and even though the latter street also constitutes a continuation of a state road entering and leaving the municipality at points other than where said county road enters it.*

COLUMBUS, OHIO, July 24, 1922.

HON. CARL P. DUNIFON, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—You have recently requested the opinion of this office upon the following:

“The Lincoln Highway, west of the city of Van Wert, Ohio, improved by the state, has as its continuation into said city, Main street, the west end of which is paved with asphalt and the remainder through the business section of said city is paved with brick.

The Lincoln Highway to the east of said city, improved by the state, has as its continuation into the said city of Van Wert, East Ridge road to its connection with Wayne street, then Wayne street for about one block south to the east end of Main street, then Main street through the city.

The Jennings road, a county road, enters the corporation near the south-east corner and continues into the city over Wayne street, which street runs north and south through the east end of the city and the east end of Main street, connects with said Wayne street.

There are also other improved streets, south of and parallel with Main, running east and west into or through the town, the east end of which connects with said Wayne street.

May the county commissioners under section 6954 of the General Code, repair or in any manner use the county road repair fund to aid in the repair of Main street?”

You have enclosed with your inquiry a map of the city of Van Wert, upon which you have indicated the line of the proposed improvement.

Section 6954 G. C. reads as follows:

“The board of county commissioners of any county may repair that portion of a county road extending into or through a municipal corporation, or a part of a county road and a city or village street or streets extending into or through a municipal corporation and forming a continuous road improvement, when the consent of the council of said municipal corporation has been first obtained and such consent shall be evidenced by the proper legislation of the council of said municipal corporation entered upon its records.”

Said section was inserted into the highway laws as an original enactment in 108 O. L., part I, p. 503, as part of an act making somewhat extensive amendments to the Highway Code. Previously to the enactment of the section, there was in force the following:

“\* \* \* The word ‘road’, as used in sections 6906 to 6953 inclusive of the General Code, shall be construed to include any state or county road or roads, or any part thereof, or any state or county road or roads, and any city or village street or streets, or any part thereof, which form a continuous road improvement.” Section 6952 G. C.

From the tenor of your letter, it is supposed that any doubts which you may have as to the right of the commissioners to proceed under section 6954 arises from the question whether Main street is to be treated on the one hand as a continuation and part of a state road, that is to say, the Lincoln Highway; or on the other hand, as a continuation and part of a county road, that is to say, the Jennings road.

It is probable that even though Main street were treated as a continuation and part of the Lincoln Highway, the county commissioners would have a right to make repairs thereon even aside from section 6954 G. C., especially in the light of section 1203 G. C., when read with the provisions already quoted from section 6952 G. C. See in this connection an opinion of this office dated June 25, 1921, Opinions of Attorney-General, 1921, Vol. I, page 556. However, that matter need not be here definitely passed upon, since your inquiry, in the belief of this department, is to be affirmatively answered by direct reference to section 6954 itself.

That section provides for two situations, (1) the repair of that portion of a county road *extending into or through* a municipal corporation; and (2) the repair of a part of a *county road* and a city or village *street or streets* extending into or through a municipal corporation and forming a *continuous road improvement*. If the Jennings road does not come within the first of these classes, it clearly comes within the second class. The map which you have submitted with your letter shows that the Jennings road enters Wayne street at an acute angle practically midway between two city streets which intersect Wayne street at right angles. While of course other roads than Wayne street might be followed to get to Main street from the end of the Jennings road where it enters Wayne street, yet the natural and shortest route is over Wayne street. Moreover, Wayne street is not only the logical right of way south from Main street to the end of the Jennings road, but is also, as shown by your letter, the way used in getting from Main street north to the Lincoln Highway where such highway leaves the city on the east. There can be no question, then, that Main street is just as much a continuation of the Jennings road, from a practical standpoint, as it is of the Lincoln Highway.

The word “improvement” as used in section 6954 is not to be taken in the narrow sense that a proposed repair must be continuous, but rather in the sense that a road proposed to be repaired in whole or in part is a continuous road. In other words, the commissioners would not be bound, in order to bring themselves within the terms of section 6954, to repair the whole of Main street and Wayne street; but as long as those streets join in making a continuous road, the commissioners are authorized to repair the whole or any part of such continuous road.

Looking at the matter from another angle, even admitting that there might be doubt on the question whether Main street and Jennings road constitute a continuous road, because of the fact that there are other available routes from Main street to Jennings road, the commissioners would certainly not be going beyond the sphere of a sound discretion in treating Main street, Wayne street, and the Jennings road as a continuous road, since, as already indicated, Wayne street constitutes the logical and no doubt the most traveled connecting link.

Nor is there any reason for believing that if Main street be treated as part of

the Lincoln Highway, that fact operates to exclude it from being treated as part of the Jennings road; for there is nothing in the statutes to indicate that the same municipal street may not be treated for improvement purposes as a continuation of two different roads.

You are therefore advised in specific answer to your inquiry that your county commissioners by virtue of section 6954 G. C. may, upon obtaining the consent of the municipal council, make repairs on Main street and pay for them out of the county road repair fund.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3391.

COUNTY TREASURER—POWER TO DETERMINE WHEN HE IS OBLIGED TO WITHDRAW PORTION OR ALL OF DEPOSITS IN INACTIVE DEPOSITARIES AND PLACE SAME IN ACTIVE DEPOSITARIES.

*The county treasurer has the power of determining in the first instance when he is obliged to withdraw a portion or all of the deposits in the inactive depositaries and place them in the active depositaries for the purpose of meeting the current expenses of the county, and in the absence of fraud or bad faith his decision will not be disturbed.*

COLUMBUS, OHIO, July 24, 1922.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date relating to the county depositary law (sections 2715 et seq. G. C.), was duly received.

The question, as I understand it, is whether or not the county commissioners, after having designated the active and inactive depositaries of county funds and awarded to them the use of county funds, may place a limitation on the amount of funds which the county treasurer may withdraw from the inactive depositaries and place in the active depositaries for current use? The answer to this question, it seems to me, is to be found in section 2715-1 G. C., which, among other things, provides that

“The deposits in active depositaries, as provided for in the next preceding section, shall at all times be subject to draft for the purpose of meeting the current expenses of the county. The deposits in inactive depositaries shall remain until such time as the county treasurer is obliged to withdraw a portion or all of same and place it in the active depositary or depositaries for current use.”

The provision of the section just quoted, in my opinion, vests in the county treasurer the power of determining in the first instance when he is obliged to withdraw a portion or all of the deposits in the inactive depositaries and place them in the active depositaries for current use, and in the absence of fraud or bad faith, his decision in the matter will not be disturbed.

While it is true the county commissioners, under the county depositary act, are clothed with the power of designating the active and inactive depositaries, yet the power of determining in the first instance the necessity, from time to time, of withdrawing funds from the inactive depositaries and placing them in the active depos-